

EXHIBIT 16

Highly Confidential-Attorneys' Eyes Only

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
Plaintiff,)
vs.) No. CV 10-03561 WHA
GOOGLE, INC.,)
Defendant.)
_____)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Videotaped Deposition of BRIAN J. SWETLAND,
taken at 333 Twin Dolphin Drive, Suite 400,
Redwood Shores, California, commencing at
9:40 a.m., Thursday, July 7, 2011, before
Leslie Rockwood, RPR, CSR No. 3462.

PAGES 1 - 188

Page 1

Highly Confidential-Attorneys' Eyes Only

<p>1 license?</p> <p>2 A. The intent here, I believe, again, is that</p> <p>3 they are -- they are non-permissive, you know, licenses,</p> <p>4 which when combined with other work, you know, cause</p> <p>5 issues -- compliance issues around source release and</p> <p>6 redistribution and so on.</p> <p>7 Q. Okay. So this will be -- this is another</p> <p>8 earlier exhibit number, 72.</p> <p>9 What is Exhibit 72?</p> <p>10 A. It apparently is an email from an engineer on</p> <p>11 the Android team. Give me a moment to read it here.</p> <p>12 So this appears to be an email thread</p> <p>13 discussing Sun's announcement of open sourcing Java.</p> <p>14 Q. So Sun did open source Java at the end of</p> <p>15 2006; is that your recollection?</p> <p>16 A. I believe that's the case, though this may</p> <p>17 be -- this implies -- this implies that, yeah, the --</p> <p>18 what is it? Does it say specifically here? The email</p> <p>19 thread seems to imply that, yes, that's when it happened.</p> <p>20 Q. Mr. Baust wrote: "I would already be happy</p> <p>21 if we can just drop in their libraries, but still not</p> <p>22 sure it's compatible with their license choices."</p> <p>23 Would you have been happy to drop in Sun's</p> <p>24 libraries into Android at that point?</p> <p>25 A. Based on the specifics of their licensing,</p> <p style="text-align: right;">Page 138</p>	<p>1 understanding of the license options provided on this</p> <p>2 open source release were that the mobile -- you know, the</p> <p>3 mobile -- the smaller version of these libraries that</p> <p>4 would be appropriate for the Android platform had a</p> <p>5 license that was incompatible with the license chosen for</p> <p>6 the Android platform.</p> <p>7 Q. BY DR. PETERS: And the -- just because I'm</p> <p>8 having trouble getting a "yes" or "no" answer from you,</p> <p>9 the Sun core libraries were made available under license</p> <p>10 for no charge by Sun; is that right?</p> <p>11 MR. PAIGE: Object to the admonishment and to</p> <p>12 the form.</p> <p>13 THE WITNESS: The -- my understanding is that</p> <p>14 they were available under the GPL license, which does not</p> <p>15 have a direct monetary charge associated, but has a</p> <p>16 series of restrictions and requirements that, you know,</p> <p>17 restrict the use of, you know, software under that</p> <p>18 license.</p> <p>19 Q. BY DR. PETERS: And the -- and so even though</p> <p>20 Sun's Open Source Java was available without charge, the</p> <p>21 license restrictions were nevertheless not acceptable to</p> <p>22 Google.</p> <p>23 Do I have that right?</p> <p>24 MR. PAIGE: Object to the form.</p> <p>25 THE WITNESS: Again, it is difficult for me</p> <p style="text-align: right;">Page 140</p>
<p>1 no, because they would be incompatible with our policy of</p> <p>2 not using GPL for core libraries.</p> <p>3 Q. So I'm -- and so Google for Android, in any</p> <p>4 event, did not end up including Sun's open source Java</p> <p>5 core libraries in Android?</p> <p>6 A. The decision was made specifically not to do</p> <p>7 so because the term -- the terms of the licensing were</p> <p>8 inappropriate for the platform.</p> <p>9 Q. Because I do want to be very clear about it,</p> <p>10 Sun offered the core libraries for no charge, and Google</p> <p>11 did not accept them; is that correct?</p> <p>12 MR. PAIGE: Object to the form.</p> <p>13 THE WITNESS: Sun released their libraries</p> <p>14 under a specific license, which for the mobile version of</p> <p>15 their platform would have made it impossible for OEMs and</p> <p>16 potentially developers to develop commercial software for</p> <p>17 that platform, which made it a -- you know, from a</p> <p>18 license standpoint, useless for Android.</p> <p>19 Q. BY DR. PETERS: So it was to protect OEMs and</p> <p>20 commercial developers that Google did not incorporate a</p> <p>21 free-of-charge version of Sun's core libraries into</p> <p>22 Android; is that right?</p> <p>23 MR. PAIGE: Object to the form.</p> <p>24 THE WITNESS: Again, I can't necessarily</p> <p>25 speak for all the business-level decisions, but my</p> <p style="text-align: right;">Page 139</p>	<p>1 to speak for Google. From my understanding of the</p> <p>2 project goals, yes, the license terms were incompatible</p> <p>3 with the goals of the project.</p> <p>4 Q. BY DR. PETERS: You wrote in Exhibit 72, this</p> <p>5 November 13th, 2006 email: "It would be nice if somebody</p> <p>6 made a stink about this and called Sun on it should it</p> <p>7 turn out to be correct, which I expect is likely. Sadly,</p> <p>8 nobody ever does call them on stuff like this."</p> <p>9 What would you call Sun on?</p> <p>10 A. I believe what I'm referring to here is the</p> <p>11 fact they're generating significant press around how open</p> <p>12 and unrestricted and, you know, wonderful Java is, when</p> <p>13 in fact, the decision they clearly made here in, you</p> <p>14 know, creating, you know, field-of-use barriers to the</p> <p>15 language actually prevents it from being used openly in,</p> <p>16 you know, whole classes of products.</p> <p>17 That's a subtle issue, and it's not an issue</p> <p>18 that articles talking about how awesome it was that</p> <p>19 Sun -- or that Java is open source seemed to pick up on.</p> <p>20 Q. But Linux is licensed under the GPL, isn't</p> <p>21 it?</p> <p>22 A. The Linux kernel is licensed under the GPL,</p> <p>23 with a specific carve-out that says that user space code</p> <p>24 running on that kernel is not affected by that license,</p> <p>25 which is similar to the Classpath exception that Sun</p> <p style="text-align: right;">Page 141</p>